DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Improving Public Safety Communications in the 800 MHz Band	)	
	)	WT Docket No. 02-55
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels	)	

OPPOSITION AND COMMENTS OF NEXTEL COMMUNICATIONS, INC. REGARDING PETITIONS FOR RECONSIDERATION

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Senior Vice President and Chief Regulatory Officer

Lawrence R. Krevor
Vice President – Government Affairs

James B. Goldstein
Senior Attorney – Government Affairs

2001 Edmund Halley Drive
Reston, VA 20191

Regina M. Keeney
Charles W. Logan
Stephen J. Berman
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006
(202) 777-7700

Counsel for Nextel Communications, Inc.

April 21, 2005

Summary

Nextel Communications, Inc. ("Nextel") hereby files its opposition and comments regarding the petitions for reconsideration of the Report and Order ("*R&O*") and Supplemental Order ("*Supplemental Order*") in the above-captioned proceeding. These orders will provide compelling public interest benefits by remedying life-threatening interference to public safety systems and providing much-needed additional spectrum for public safety communications. Nextel urges the Commission to affirm its 800 MHz band reconfiguration decision by denying the petitions for reconsideration that would frustrate these vital public safety objectives. The petitioners offer no basis to overturn the Commission's carefully balanced band reconfiguration decision, adopted after an extensive proceeding incorporating a fully developed record and painstaking analysis.

A handful of Economic Area ("EA") and non-Enhanced Specialized Mobile Radio ("non-ESMR") licensees have filed petitions for reconsideration objecting to the Commission's band reconfiguration decision. Contrary to these petitioners' claims, the Commission's band reconfiguration decision protects the legitimate interests of *all* incumbent licensees. Many of the petitioners' licenses require no retuning at all; to the extent some of their channels need to be retuned, they will be ensured comparable facilities on alternate 800 MHz channels. The Commission has successfully used the "comparable facilities" standard in numerous prior band realignments and the courts have repeatedly upheld this standard.

Thus, retuned licensees will receive replacement channels that provide them the same geographic coverage and functionality as their existing licenses. Nextel will fund their retuning costs, and they will receive *enhanced* interference protection in the

reconfigured band. These incumbents will also continue to have the flexibility to deploy compatible low-density, "high-site" cellular technology in the non-ESMR channel block, as the Commission has found such systems do not pose a risk of harmful interference to public safety systems. This flexibility assures that such licensees can implement compatible cellular "high-site" technologies if they wish to do so.

Some of the Petitioners may have the option of retuning their EA licenses to the ESMR segment of the reconfigured band, provided they demonstrate compliance with the terms and conditions adopted by the Commission in its *Supplemental Order*. These conditions will prevent the recreation of an incompatible mix of interference generating high-site and low-site system architectures in the new ESMR (high-density, low-site) channel block. Moreover, these conditions assure that incumbent licensees are treated equitably in the reconfiguration and receive comparable facilities – no more and no less.

The Commission should summarily reject the cynical efforts of some petitioners to abuse 800 MHz reconfiguration to obtain more spectrum or more geographic coverage or what they may perceive as a better bargaining position in potential secondary market transactions. The Commission's carefully balanced 800 MHz reconfiguration decision will solve the commercial mobile radio service ("CMRS") – public safety interference problem and provide additional 800 MHz spectrum for public safety networks with minimal disruption to all 800 MHz licensees. The cynical efforts of some petitioners to subvert these public interest objectives for commercial gain deserve little consideration and no relief.

One public safety party and several parties representing utility companies request that the Commission modify the interference abatement measures adopted in the *R&O*

and *Supplemental Order*. In the *Supplemental Order,* the Commission adjusted the thresholds that will apply in each region prior to the completion of band reconfiguration to avoid placing unreasonable burdens on CMRS licensees *while CMRS channels remain interleaved with public safety and private radio systems.* Thus, under the Commission's new rules, public safety and other 800 MHz band incumbents will be entitled to the full range of interference abatement measures provided they satisfy interim signal strength thresholds established by the Commission. The Commission struck an equitable, carefully considered balance in achieving its public interest goals of remedying the interference problem without unduly disrupting existing service, and the public safety community endorsed these interim and long-term standards. Altering this balance would not only impose excessive burdens on CMRS licensees, it would be unwarranted. This is especially the case with for-profit utility and other private licensees, who have the resources – and should have the responsibility – to construct and maintain systems that are more interference-resistant than the outdated facilities some of these licensees currently utilize. Of course, once reconfiguration is completed in a region, the full final interference protection provisions endorsed by the public safety community and adopted by the Commission will automatically go into effect.

Finally, to address the scarcity of available 800 MHz spectrum in the Atlanta market, SouthernLINC has filed a petition for reconsideration requesting that the Commission eliminate the Expansion Band at 812.5-813.5/857.5-858.5 MHz within a 70-mile radius of Atlanta's center. Nextel supports this request. Such a step would help ensure that 800 MHz band realignment can be successfully completed in the Atlanta area with minimal disruption to all incumbent licensees.

Table of Contents

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Improving Public Safety Communications	)	
in the 800 MHz Band	)	
	)	WT Docket No. 02-55
Consolidating the 800 and 900 MHz	)	
Industrial/Land Transportation and	)	
Business Pool Channels	)	

OPPOSITION AND COMMENTS OF NEXTEL COMMUNICATIONS, INC. REGARDING PETITIONS FOR RECONSIDERATION

Nextel Communications, Inc. ("Nextel") hereby files its opposition and comments to the petitions for reconsideration of the Report and Order and Supplemental Order in the above-captioned proceeding.[1] Nextel urges the Commission to deny the petitions for reconsideration filed by non-Nextel, non-SouthernLINC Specialized Mobile Radio ("SMR") licensees that seek to exploit the Commission's 800 MHz band reconfiguration decision for their own commercial gain. Nextel also opposes the requests of certain private radio parties to change the Commission's carefully crafted 800 MHz interference abatement requirements during the reconfiguration transition period. Finally, Nextel supports SouthernLINC's request that the Commission adjust the post-reconfiguration

---

[1] *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels,* Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004) ("*R&O*"); Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120 (2004) ("*Supplemental Order*"). *See also* Order, DA 05-411, WT Docket No. 02-55 (rel. Feb. 14, 2005) (establishing single deadline for filing oppositions to reconsideration petitions regarding both the *R&O* and *Supplemental Order*).

band plan for the Atlanta area that will protect public safety while accommodating the spectrum needs of all incumbent licensees in this market. These actions will promote the expeditious and effective implementation of the Commission's decision to remedy life-threatening interference to public safety systems.[2]

I. THE COMMISSION'S RECONFIGURATION DECISION PROTECTS THE LEGITIMATE INTERESTS OF ALL SMR LICENSEES

Under the 800 MHz reconfiguration decision, non-Nextel, non-SouthernLINC licensees operating Enhanced SMR ("ESMR") systems as of November 22, 2004 (the Federal Register publication date of the *R&O*) have the option of retuning their Economic Area ("EA") licenses to the post-reconfiguration ESMR channel block. They may also retune site-specific licenses to the ESMR block if they satisfy certain clearly defined eligibility criteria established by the Commission. Current non-ESMR licensees who hold EA licenses have the opportunity to elect to retune their EA licenses (but not their site-specific licenses) to the ESMR block; however, such licensees would only be retuned to the same amount of unencumbered spectrum that they currently have under their EA licenses, provided that the system they deploy on the retuned channels meets the Commission's requirements for operation in the low-site, high-density ESMR channel block.[3] All incumbent system retunings will be governed by the Commission's "comparable facilities" standard that has been used successfully in retuning incumbent

---

[2] Nextel has withdrawn its December 22, 2004 Petition for Reconsideration, except for its request to extend the Nextel – Broadcast Auxiliary Service mandatory negotiation deadlines as proposed by broadcast industry parties. *See* Letter from James B. Goldstein, Nextel, to Marlene Dortch, FCC Secretary (April 21, 2005).

[3] *See R&O* ¶¶ 162-163; *Supplemental Order* ¶¶ 75-81. Non-ESMR licensees that elect to retune their EA licenses to the ESMR segment will be entitled only to reasonable transactional costs, such as legal and engineering fees directly related to the comparable facilities determination. *Supplemental Order* ¶ 79.

licensees in prior 800 MHz retuning programs authorized by the Commission and in Commission licensee relocation/retuning decisions in numerous other spectrum bands.

Several incumbent SMR licensees have filed petitions raising various arguments regarding the retuning of non-Nextel, non-SouthernLINC SMR licensees.[4] None of these arguments have any merit. The Commission's reconfiguration decision protects the legitimate interests of these licensees and is fully consistent with its statutory authority.[5]

A. The Commission Provided Sufficient Notice of the Rules Adopted in the *R&O* and *Supplemental Order*

The Coastal Petitioners argue that the Commission failed to provide adequate notice of the rules adopted in the *R&O* and *Supplemental Order* regarding the retuning of non-cellular "high-site" incumbent SMR licensees to conform to the reconfigured 800 MHz band plan. This argument is meritless. On March 15, 2002, the Commission issued

---

[4] Petition for Reconsideration of AIRPEAK Communications, LLC (March 10, 2005) ("AIRPEAK Petition"); Petition for Partial Reconsideration of Coastal SMR Network, LLC, A.R.C., Inc d/b/a Antenna Rentals Corp., Skitronics, LLC, Waccamaw Wireless, LLC, CRSC Holdings, Inc, and Silver Palm Communications, Inc. ("Coastal Petitioners") (March 10, 2005) ("Coastal March 10 Petition"); Joint Petition for Partial Reconsideration of Coastal SMR Network, LLC/A.R.C., Inc. and Scott C. MacIntyre (Dec. 22, 2004) ("Coastal December 22 Petition"); Petition for Reconsideration of Preferred Communication Systems, Inc. and Silver Palm Communications, Inc. (Dec. 22, 2004) ("Preferred Petition"); Petition for Reconsideration of Richard Duncan d/b/a Anderson Communications (Dec. 22, 2004) ("Duncan Petition"); Comments of Charles D. Guskey (Dec. 22, 2004) ("Guskey Comments"); Petition for Partial Reconsideration of James A. Kay, Jr. (Dec. 22, 2004) ("Kay Petition"). (Unless otherwise indicated, all filings referenced herein were filed in WT Docket No. 02-55.)

[5] In addition, the Commission should dismiss the Preferred Petition because it far exceeds the page limit set forth in the Commission's rules. The Preferred Petition rambles on for 53 single-spaced pages. Under 47 C.F.R. § 1.429(d), reconsideration petitions are limited to 25 double-spaced pages. *See A&T Corp. Emergency Petition for Settlements Stop Payment*, Order on Review, 19 FCC Rcd 9993 n.50 (2004) (dismissing legal arguments contained in an application for review for exceeding the 25-page limit under the Commission's Rules); *COMSAT/Intelsat Assignment Applications*, Order on Reconsideration, 18 FCC Rcd 16605 ¶8, n.29 (WTB and IB 2003) (finding an applicant's petition for reconsideration to be procedurally defective for exceeding 25-page limit).

its Notice of Proposed Rulemaking ("*NPRM*") in this proceeding seeking comment on various band reconfiguration proposals to prevent CMRS – public safety interference. The Commission specifically sought comment on the treatment of incumbent non-cellular 800 MHz SMR licensees in the reconfiguration process.[6] The Commission subsequently issued two separate public notices regarding band reconfiguration, prompting two more rounds of public comment. These public notices sought comment on Consensus Plan filings that proposed, among other things, that SMR operations (both site-based and EA licensees) that currently use high-site, non-cellular architectures should continue to operate in the non-cellular segment of the reconfigured band.[7] In addition, after adoption of the *R&O* and prior to the release of the *Supplemental Order*, the Commission solicited yet another round of comments concerning the retuning of non-Nextel, non-SouthernLINC SMR licensees and other issues.[8]

All interested parties, including the Coastal Petitioners, were consequently placed on notice and given numerous opportunities to comment on the retuning treatment of non-ESMR licensees under potential 800 MHz band reconfiguration plans. In fact,

---

[6] *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Notice of Proposed Rulemaking, 17 FCC Rcd 4873, ¶¶ 20-28, 34-37, n. 36 (2002) ("*NPRM*").

[7] *See* Public Notice, "Wireless Telecommunications Bureau Seeks Comment on 'Consensus Plan' Filed in the 800 MHz Public Safety Interference Proceeding," DA 02-2202 (rel. Sept. 6, 2002); Reply Comments of the Consensus Parties, at 11-14 (rel. Aug. 7, 2002). *See also* Public Notice, "Wireless Telecommunications Bureau Seeks Comment on 'Supplemental Comments of the Consensus Parties' Filed in the 800 MHz Public Safety Interference Proceeding," DA 03-19 (rel. Jan. 3, 2003); Supplemental Comments of the Consensus Parties, at ii, 9-11, 17-27 (rel. Dec. 24, 2002).

[8] Public Notice, "Commission Seeks Comment on *Ex Parte* Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding," FCC 04-253 (rel. Oct. 22, 2004).

several of the Coastal Petitioners took advantage of these opportunities by filing comments and other submissions in this proceeding.[9] This belies their claim that the Commission failed to provide sufficient notice of its proposed rule changes.

B. The Reconfiguration Decision Ensures that Non-ESMR Licensees, Where Necessary, are Retuned to Comparable Facilities

The Coastal Petitioners, Preferred, Duncan, and Guskey (collectively, the "non-ESMR Petitioners") argue that their high-site SMR operations will be harmed by the Commission's band reconfiguration decision because they may suffer service degradation during the retuning process and because they will face restrictions in converting their high-site facilities to digital, cellular architectures. These arguments are misleading at best; they reflect self-serving distortions by these petitioners of the Commission's public interest objective: remedying interference to 800 MHz public safety systems. To achieve this objective, the Commission's reconfiguration decision requires the retuning to the new ESMR channel block of only those systems that are truly low-site, high-density cellular-like operations because they have demonstrably caused interference to high-site public safety networks operating on adjacent and/or interleaved channels in the same geographic areas. Incumbent SMR licensees that operate predominantly high-site, low-density systems do not pose the same threat of harmful interference to public safety licensees in the 800 MHz band; on the contrary, they are good spectrum neighbors. The

---

[9] *See* Comments of Silver Palm Communications (April 8, 2004); Comments of Coastal (Dec. 2, 2004). One of the Coastal Petitioners, Skitronics, not only commented on the reconfiguration plan under consideration by the Commission, *it endorsed it*. *See* Comment of Skitronics at 2 (Feb. 25, 2003). Skitronics has never provided a legitimate explanation as to why it now opposes a reconfiguration decision it previously endorsed. The Commission should not permit such abuses of its rulemaking process. *See Microwave Communications, Inc.,* 18 F.C.C.2d 953, ¶ 26 (1969) ("[W]e cannot ignore statements made by a party in filings with the Commission which contradict or are inconsistent with the position taken by that party in an adjudicatory proceeding.").

non-ESMR Petitioners' systems fall in the latter category. To the extent their licenses need to be retuned at all, they will be ensured comparable facilities at Nextel's expense as set forth in the Commission's orders – no more and no less.

The Commission's reconfiguration decision is the product of an exhaustive administrative record, including extensive engineering analyses. This record was developed over the course of 2½ years, with four rounds of comments including over 2500 filings. There is no need to conduct yet more proceedings, as the Coastal Petitioners suggest. The Commission's decision is well grounded in its factual, technical, and legal conclusions. Further proceedings would only delay the resolution of the public safety interference problem and continue to place first responders at risk during such delay.

The Coastal December 22 Petition (at 3-5) questions the Commission's use of the comparable facilities standard to protect incumbent rights in a retuning process. These parties ignore not only that this standard has been successfully applied in retuning incumbent licensees in numerous other contexts,[10] but also that the courts have repeatedly upheld the Commission's use of this standard.[11] The Commission should consequently reject the suggestion in the Coastal December 22 Petition (at 4) that the Commission must first publish a "table of frequency assignments" spelling out the precise replacement

---

[10] *R&O* ¶ 148 (noting that the comparable facilities standard has been "successfully used to accomplish previous band reconfigurations").

[11] *See Teledesic, LLC v. FCC*, 275 F.3d 75, 86 (D.C. Cir. 2001) (approving FCC's application of the "comparable facilities" requirement in the 18 GHz band, and citing prior decisions in which the FCC and D.C. Circuit upheld the same standard in other contexts); *Ass'n of Public-Safety Communications Officials-International, Inc. v. FCC*, 76 F.3d 395, 399 (D.C. Cir. 1996) (upholding a relocation regime in which emerging technology licensees would pay all costs associated with relocating incumbents to "comparable facilities" and rejecting the claim that incumbents would be "significantly injured" as a result of relocation).

channels each incumbent will receive before band reconfiguration can proceed. Having to revise a table of frequency assignments every time a channel assignment is revised or changed is a recipe for delay that would expose public safety licensees to increased risk and jeopardize timely completion of reconfiguration.

Many of the non-ESMR Petitioners' systems will not need to be retuned at all because they are located outside of Channels 1-120, which will need to be cleared for the new NPSPAC band. This obviates any concern that they purport to have regarding application of the comparable facilities standard. The Consensus Parties estimated that over 70% of all high-site SMR and Business and Industrial Land Transportation ("B/ILT") licensees will not need to be retuned.[12] For example, Skitronics, one of the Coastal Petitioners, is one such licensee; *none* of its EA or site-based facilities require retuning.[13] As the Commission has stated in denying Skitronics's request to stay reconfiguration, the Commission's decision "permits Skitronics to remain on its current spectrum and continue serving its customers without any disruption whatsoever."[14]

To the extent some of the licenses held by the non-ESMR Petitioners require retuning, the Commission's decisions require that they be retuned to comparable replacement channels that afford them the same geographic coverage and the same

---

12 Supplemental Comments of the Consensus Parties at 10 (Dec. 24, 2002).

13 Similarly, Duncan is licensed for but 1 five-channel license in the interleaved portion of the 800 MHz band and it too will not require any retuning whatsoever.

14 *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels,* Order, 20 FCC Rcd 641, ¶ 14 (Public Safety and Critical Infrastructure Division 2005) ("*Order Denying Stay*").

functionality as their existing licenses.[15] Nextel will fund their retuning costs. In addition, these licensees will enjoy substantially *increased* interference protection in the reconfigured 800 MHz band from incompatible cellular, high-density operations. The Transition Administrator will oversee the entire process and incumbent licensees will have the right to raise concerns about the retuning of their systems with the Transition Administrator and, if necessary, the Commission. Moreover, the Commission provided for procedures to minimize any disruption to incumbent licensee operations. In short, there will be no undue disruption to the services being provided by the non-ESMR Petitioners (to the extent they are providing any service at all).

Like all other licensees, the non-ESMR Petitioners will be prohibited from deploying low-site, high-density cellular architectures in the non-cellular segment of the reconfigured band absent a waiver from the Commission. This provision, of course, is necessary to prevent replicating the very same public safety interference problem that gave rise to this proceeding. The Commission has the statutory authority to adopt new technical rules to prevent potentially life-threatening interference among its licensees. As the Commission stated recently, "Commission licensees ... have no vested right to an unchanged regulatory framework throughout their license term."[16] In seeking a stay of the reconfiguration decision, Skitronics made the same exaggerated claims the non-ESMR Petitioners now make regarding the impact of the restrictions on high-density

---

15 *Order Denying Stay* ¶ 2 n. 8 ("Comparable facilities are those that will provide the same level of service as the incumbent's existing facilities with transition to the new facilities as transparent as possible to the end user.").

16 *Id.* ¶ 10, citing *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978); *Comm. for Effective Cellular Rules v. FCC*, 53 F.3d 1309, 1316-17 (D.C. Cir. 1995); *WBEN, Inc. v. United States*, 396 F.2d 601 (2d Cir. 1968), *cert. denied*, 393 U.S. 914 (1968).

cellular architectures in the non-cellular block. In denying the stay request, the Commission dismissed these claims, finding that they "substantially overstate the effect that band reconfiguration would have on their operations."[17]

Under the *Supplemental Order*, non-ESMR operators may elect to retune their EA licenses (but not their site-specific facilities) to the ESMR segment of the reconfigured band provided they construct compatible high-density cellular systems in accordance with their existing build-out deadlines. In making this option available to non-ESMR EA licensees, "the Commission preserved licensees' expectancies to the extent possible consistent with abatement of interference to public safety and [critical infrastructure industry ('CII')] licensees."[18] In addition, even within the non-cellular segment of the band, the petitioners will have "maximum flexibility consistent with ensuring the integrity of public safety and CII communications[;]" the Commission's rules will permit them to "convert to low density cellular technology, which from an interference perspective is much more compatible with public safety systems."[19] Thus, the Commission's reconfiguration decision preserves maximum flexibility for non-ESMR Petitioners to upgrade their systems and convert to new technologies while at the same time protecting public safety communications against re-occurrence of the very type of interference this proceeding was initiated to resolve.

In any case, however, the non-ESMR Petitioners' claims regarding their need for such flexibility lack credibility given their limited channel holdings and track record in deploying services. Some of the petitioners have held their licenses for years, yet still are

---

17 *Order Denying Stay* ¶ 9.

18 *Id.*

19 *Id.*

not providing *any* service to consumers.[20] Others, while they appear to be providing service, have long chosen to operate as non-cellular, high-site SMR licensees.[21] Such non-cellular technology is the most efficient way to provide traditional dispatch-centric service, and fits well with the rural markets and limited number of channels typically covered by the petitioners' licenses.[22] The petitioners have not constructed nor would they be able to construct true high-density cellular networks because in most cases they have not invested in and therefore do not have sufficient spectrum to do so.

Rather than needing flexibility to deploy different technologies, the non-ESMR Petitioners' real concern appears to be that their incumbent site-specific licenses will no longer encumber EA licenses held by ESMR licensees such as Nextel after band reconfiguration.[23] Petitioners apparently fear that ESMR licensees will no longer have an incentive to purchase site-specific licenses that will remain in the non-ESMR portion of the 800 MHz band. Thus, what the petitioners are really seeking is for the Commission to guarantee them the ability to sell their licenses to ESMR licensees like Nextel by

---

[20] Preferred has held licenses in numerous states since 2000, and, with the *possible* exception of Puerto Rico, it has thus far failed to use those licenses to provide *any* service to *any* customers.

[21] Coastal has claimed that "regulatory uncertainty" and "adverse economic conditions ... retarded investment in [its] digital-cellular conversion." Comments of Coastal at 3 (Dec. 2, 2004). The Commission should reject these excuses. The *NPRM* in this proceeding placed no restriction on the deployment or acquisition of new facilities or spectrum prior to the adoption of the *R&O*. Nextel faced the same if not greater uncertainty during that time, yet did not forego construction of new facilities to serve its customers, building more than three thousand sites during the pendency of this proceeding. Nextel also is aware of other, smaller operators that built out systems during this time.

[22] Nextel, in contrast, has invested billions of dollars to construct a high-density, cellular network that offers a broad range of nationwide and international wireless communications services to over 16 million customers.

[23] *See* Duncan Petition at 4.

retuning them to the ESMR channel block regardless of whether they met the Commission's ESMR retuning requirements or whether they even have sufficient spectrum to deploy a high-density, cellular network. The relief the petitioners seek could recreate the high-site/low-site interference risk that Nextel is contributing almost $5 billion to eliminate through 800 MHz band reconfiguration. And, on top of that, the petitioners would then be able to exert leverage on Nextel to buy them out. None of this has anything to do with solving the CMRS – public safety interference problem in the 800 MHz band or advancing the public interest. As the Commission has stated, "[a]ltering the distribution of profits among private parties is not, and never has been, a proper or desirable function of the Commission."[24]

C. The Commission Should Reject AIRPEAK's Proposed Spectrum Grab

In its petition for reconsideration of the *Supplemental Order*, AIRPEAK requests that the Commission modify its rules to enable non-Nextel, non-SouthernLINC ESMR licensees to convert site-based licenses that are retuned to the ESMR block to wide geographic area, incumbent-free EA licenses. AIRPEAK also requests that the Commission modify the criteria for determining whether site-specific licenses are eligible for retuning to the ESMR block; under AIRPEAK's proposal, an ESMR licensee could elect to retune a site-based license to the ESMR segment even if it is not an integral part of its ESMR system under the criteria established in the *Supplemental Order*.[25]

---

[24] *Evaluation of the Syndication and Financial Interest Rules*, Second Report and Order, 8 FCC Rcd 3282, ¶ 42 (1993).

[25] On March 17, 2005, AIRPEAK sought the same relief in a waiver request ("AIRPEAK Waiver Request") that is currently pending before the Commission. Nextel timely filed an opposition to this waiver request on March 28, 2005.

Interestingly, AIRPEAK has filed with the Transition Administrator an "election" to retune nearly every one of its licensed channels in numerous western markets to the ESMR channel block. Yet it has not demonstrated in that filing that it has constructed and is operating an ESMR system as defined by the Commission in any one of its markets.[26] Thus, its "election" along with its petition for reconsideration seek to eviscerate the Commission's ESMR eligibility criteria to authorize an unprecedented spectrum grab at Nextel's expense in these markets.

Nextel has no objection to AIRPEAK – or any other eligible incumbent – exercising its option to be retuned to the ESMR channel block, provided the incumbent fully complies with the threshold ESMR retuning eligibility criteria established in the *Supplemental Order*. AIRPEAK's election filing demonstrates that it does not meet those threshold criteria and AIRPEAK provides no compelling public interest rationale for modifying the carefully and thoughtfully articulated ESMR block eligibility criteria the Commission adopted based on the extensively debated and fully developed record in this proceeding.

1. *Exchanging Site-Based Licenses for EA Licenses*

The Commission's carefully considered *Supplemental Order* (¶ 78) makes clear that an eligible site-specific license that is retuned to the ESMR band "is limited to the 40 dBμ/V coverage contour it provided as of the date of the *800 MHz R&O* was published in the Federal Register." This limitation is entirely reasonable, given that site-based stations are entitled to protection only within their 40 dBμ/V contour and the Commission's

[26] *See* Letter from James B. Goldstein, Nextel, to Catherine Seidel, Acting Chief, Wireless Telecommunications Bureau, at 9-15 (April 19, 2005).

reconfiguration decision is intended only to provide licensees with *comparable* replacement spectrum.

The AIRPEAK Petition (at 8), however, requests that retuned site-based facilities with 22 dBμ/V contours covering more than 50% of the EA population be exchanged for EA-wide, incumbent-free channels in the ESMR block. This would significantly expand the spectrum AIRPEAK currently holds under dozens of its limited site-specific licenses. AIRPEAK offers no public interest support for its self-serving proposal to upgrade limited site-specific authorizations to *unencumbered* EA-wide licenses.[27] It simply asserts that "it would be both equitable and simpler from an administrative perspective to exchange the site-based stations for an unencumbered EA-wide authorization."[28] There is nothing simple or equitable about AIRPEAK's brazen attempt to expand its license rights far beyond what is necessary to provide it comparable facilities in the 800 MHz reconfiguration process. Moreover, the additional spectrum above 817/862 MHz that AIRPEAK would receive under its proposal would be spectrum that would come directly out of Nextel's post-reconfiguration holdings. AIRPEAK's request has no basis in fact, law or policy nor would it advance in any way the public's interest in eliminating interference to public safety communications systems in the 800 MHz band.

2. *The Commission's Contour Overlap Requirement*

Under the rules adopted in the *Supplemental Order* (¶78), a non-Nextel, non-SouthernLINC ESMR licensee may only retune a site-specific license to the ESMR segment if the site-specific license has a 40 dBμ/V coverage contour overlap with another

---

[27] AIRPEAK also fails to provide any legitimate rationale for its use of 22 dBμ/V interference contours rather than 40 dBμ/V service contours in its calculation of population coverage for site-specific licenses.

[28] AIRPEAK Petition at 9.

cell site that is integral to the ESMR system and has "hand off" capability. If the site-specific license did not satisfy this and other conditions as of November 22, 2004, it is not eligible for retuning to the ESMR block. These conditions serve the public interest by establishing clear rules for the retuning process. They also help to assure that an incumbent licensee cannot enrich itself by taking advantage of the reconfiguration process.

The AIRPEAK Petition (at 5-7) requests that the Commission eliminate its contour-overlap requirement. This change would not, however, better remedy the public safety interference problem. Nowhere in its petition does AIRPEAK demonstrate that retuning its "stand-alone" site-specific licenses to the ESMR block is necessary to provide AIRPEAK comparable facilities or prevent interference to 800 MHz public safety systems. To the contrary, the facts suggest AIRPEAK can operate these facilities using a low-density cellular architecture that can be operated in the non-ESMR block without causing this interference.

AIRPEAK's facilities serve "very small communities."[29] They are in predominantly rural, often sparsely populated areas that do not require the intensive spectrum reuse made possible by high-density cellular architectures to provide the service AIRPEAK offers. The fact that some of the cell sites in question do not have 40 dBμ/V coverage overlaps with other cells in AIRPEAK's network further confirms that AIRPEAK can and does provide service in these areas using low-density, high-site facilities. It appears, moreover, that AIRPEAK's recent build-out has been driven not by consumer demand but by a belated effort to dress up these site-based facilities for the sole

---

[29] AIRPEAK Waiver Request at 11.

purpose of persuading the Commission that these stations should be retuned to the ESMR block, where they could still be purchased by Nextel or another high-density cellular operator.[30]

There is consequently no public interest need to retune these non-overlapping site-specific facilities to the ESMR block. They do not pose a risk of harmful interference to public safety systems, and retuning is not required to provide AIRPEAK comparable facilities. In addition, there is no technical or operational impediment that prevents making these site-based licenses part of an integrated network. Retuning "stand alone" site-specific licenses to the ESMR segment would only further reduce Nextel's post-reconfiguration holdings in this segment and interrupt its network deployment. This would undermine the Commission's efforts to ensure that Nextel receives sufficient replacement spectrum as compensation for its very substantial contributions to the 800 MHz band reconfiguration decision.

II. THE COMMISSION SHOULD NOT MODIFY ITS INTERIM INTERFERENCE ABATEMENT STANDARDS FOR UTILITY LICENSEES

A. The Commission Should Reject Utility Company Arguments for Greater Interference Protection

In their petitions, certain utility companies and associations urge the Commission to impose more burdensome interference requirements on CMRS licensees.[31] For the

---

[30] AIRPEAK complains that the *Supplemental Order* was issued after the November 22, 2004 cut-off date for determining which site-based stations were eligible for retuning to the ESMR block, and that it therefore did not have the opportunity to satisfy the eligibility criteria as clarified in that order. AIRPEAK Petition at 7. The Commission, however, has the authority to establish the effective date for its new rules. Indeed, the Commission could have established a cut-off date far earlier than publication of the *R&O* in the Federal Register. *See Sinclair Broadcast Group, Inc. v. FCC,* 284 F.3d 148, 165-67 (D.C. Cir. 2002) (upholding FCC order applying new restrictions on television local marketing agreements that were entered into after the adoption date of a Further Notice of Proposed Rulemaking previously issued in the proceeding).

most part, these utility petitioners seek interference protection equivalent to what the Commission prescribed for public safety communications systems. The utilities variously ask for the same interim interference framework as public safety operators,[32] the same right as public safety licensees to leave the 800 MHz expansion band,[33] the same interference "safety valve" as public safety licensees,[34] and the grandfathering of older radio receivers with full interference protection.[35]

The Commission should reject these requests and maintain the carefully balanced interference framework adopted in the *R&O* and the *Supplemental Order*. The common thread through these utility filings is the petitioners' reluctance to commit the resources necessary to construct and maintain up-to-date systems and take other reasonable steps to make their systems more interference-resistant, such as increasing signal strength or procuring improved receivers. As the Commission found in the *Supplemental Order*, CII "licensees generally have greater access to funds sufficient to improve signal strength than public safety entities which operate on an appropriated funds basis."[36]

Nextel and the other cellular carriers are now required to provide the *R&O*'s interference protection measures where CII licensees meet the interim signal strength

---

31 Petition for Reconsideration of Consolidated Edison Company of New York, Inc. (Mar. 10, 2005) ("ConEd March 10 Petition"); Petition for Clarification and Reconsideration of Consolidated Edison Company of New York, Inc. (Dec. 22, 2004) ("ConEd Petition"); Petition for Reconsideration of Entergy Corporation and Entergy Services, Inc. (Dec. 22, 2004) ("Entergy Petition"); Petition for Reconsideration of the American Petroleum Institute and the United Telecom Council (Mar. 10, 2005) ("API/UTC Petition").

32 API/UTC Petition at 4-9.

33 Entergy Petition at 5-7.

34 *Id.* at 7-8.

35 ConEd Petition at 6-8; ConEd March 10 Petition at 2-4.

36 *Supplemental Order* ¶ 43.

standards set forth in the *Supplemental Order* (¶ 39). Even where CII licensees do not meet these standards, Nextel will continue to apply Best Practices during the band transition in order to protect CII and other private wireless licensees from interference. This is the same level of interference protection that these systems have enjoyed to date, and petitioners have failed to demonstrate that Best Practices will be insufficient to protect their systems during this interval, which in most areas promises to be shorter than the Commission's three-years-plus 800 MHz proceeding. Following 800 MHz band reconfiguration, non-public safety 800 MHz non-ESMR block licensees will have virtually the same level of interference protection as their public safety counterparts.

The additional interference protection requirements proposed by utility parties are not only unwarranted, they would impose excessive burdens on CMRS licensees. This would especially be the case during the interim retuning period, when Nextel will continue to operate on channels interleaved with CII and public safety licensees as it undergoes multiple retuning activities to retune other incumbents. The fact is that interference among for-profit operators presents a very different equation in terms of who should bear the mitigation burden than is presented by CMRS – public safety interference. The Commission has acted reasonably and fairly in setting forth interim interference abatement rules applicable to for-profit licensees during the reconfiguration transition period. The Commission's priority in this proceeding should continue to be protecting the operations of public safety licensees. The *R&O* and *Supplemental Order* strike the appropriate balance in protecting public safety and other licensees against interference without imposing unreasonable burdens on CMRS licensees.

B. The Commission Should Maintain Its Existing Interim Interference Standard for Public Safety Licensees

The *Supplemental Order* (¶¶ 38-39) modified the signal strength threshold that 800 MHz non-cellular licensees must meet during the band transition in order to gain full interference protection, raising this threshold from -101/-104 dBm to -85/-88 dBm. This change was endorsed by a coalition of the nation's leading public safety organizations.[37] In its petition, the Tri-State Radio Planning Committee ("Tri-State") urges the Commission to reinstate the *R&O*'s -101/-104 dBm threshold as the interim standard for NPSPAC licensees.[38] The Commission should deny this request.

The original *R&O* signal strength threshold was unsound as an interim standard, even as applied to NPSPAC licensees, because it was based on technical assumptions and solutions specific to a post-reconfiguration, de-interleaved 800 MHz spectrum environment.[39] It would not be feasible for Nextel or other CMRS carriers to meet these interference protection requirements while the 800 MHz band remains interleaved during the reconfiguration process. Even if the *R&O* threshold was extended only to NPSPAC

---

[37] Comments in Response to *Ex Parte* Submissions, Association of Public-Safety Communications Officials-International, Inc., International Association of Chiefs of Police, International Association of Fire Chiefs, Inc., Major Cities Chiefs Associations, Major Country Sheriffs' Association, and National Sheriffs' Association, at 3 (Dec. 2, 2004).

[38] Petition for Reconsideration of Tri-State Radio Planning Committee at 2-3 (Jan. 21, 2005).

[39] In the *Supplemental Order*, the Commission stated that there was evidence "(a) showing that the thresholds established in the [*R&O*] could impose substantial operational restrictions on ESMR carriers operating in the interleaved channels prior to completion of band reconfiguration; and (b) that field experience has shown that a lesser standard will provide less complete – but still meaningful – interference relief while band reconfiguration is being completed." *Supplemental Order* ¶ 38. *See also* Letter from Lawrence R. Krevor, Nextel, to Marlene H. Dortch, FCC Secretary (Sep. 28, 2004) (attaching presentation on "Transition Period Interference Protection Standard").

licensees, Nextel and other cellular carriers would suffer significant holes in their service coverage, resulting in degraded service, dropped calls, and reduced 911 call reliability.

Contrary to Tri-State's claims, the Commission's balanced interference protection framework will protect the operational integrity of public safety communications systems in the NPSPAC band during the transition, especially given the enhanced mitigation measures that will apply under the *Supplemental Order* (¶ 42) even where public safety licensees do not meet the interim signal standards. Moreover, Tri-State's NSPAC region, Region 8, is part of "Wave 1" of 800 MHz reconfiguration and will be retuned on the fastest track.[40] Upon completion of retuning in its region, the *R&O* signal strength threshold will automatically become effective.

C. The Commission Should Reject Proposals to Apply the 800 MHz Interference Abatement Rules to the 900 MHz Band

The Commission should reject the argument by some non-public safety petitioners that the 800 MHz interference framework should also be applied to the 900 MHz band.[41] These interference abatement rules are simply unnecessary at 900 MHz. Nextel has been operating its 900 MHz ESMR systems since 2002, and it has not received a single interference complaint from a B/ILT licensee during that period. In order to minimize the potential for harmful interference to other licensees, Nextel will continue to rely on sound engineering principles, and it will follow voluntary Best Practices in continuing to build out and operate these 900 MHz facilities, which will

---

[40] *See* Regional Prioritization Plan of the 800 MHz Transition Administrator at 23-24 (Jan. 31, 2005).

[41] Petition for Reconsideration of Association of American Railroads at 4-6 (Dec. 17, 2004); Petition for Reconsideration of Excelon Corporation at 4-5 (Dec. 22, 2004); Petition for Reconsideration of National Association of Manufacturers and MRFAC, Inc. at 4-8 (Dec. 22, 2004).

become increasingly important in allowing Nextel to reconfigure public safety operators in the 800 MHz band.[42] The additional interference measures required at 800 MHz would impose substantial operational burdens on 900 MHz commercial licensees, and would be contrary to the "flexible use" policies proposed in the Commission's recent *NPRM* on the licensing and service rules for the 900 MHz band.[43] Finally, unlike public safety licensees and similar to the 800 MHz utilities discussed above, B/ILT licensees at 900 MHz generally have the resources to deploy robust, interference-resistant systems.

In any event, the Commission's 800 MHz public safety proceeding is not the appropriate forum for addressing interference concerns in the 900 MHz band. Instead, the Commission should resolve such issues in its 900 MHz rulemaking proceeding, where it has specifically sought comment on this matter.[44]

III. THE COMMISSION HAD STATUTORY AUTHORITY TO ASSIGN NEXTEL 1.9 GHz REPLACEMENT SPECTRUM

Several petitions raise arguments regarding the Commission's authority to assign Nextel replacement spectrum in the 1.9 GHz band and the valuation analysis set forth in the *R&O*.[45] The Commission thoroughly addressed these issues in its comprehensive and

---

[42] There are no public safety operations in the 900 MHz band, as the spectrum has been exclusively allocated to B/ILT and commercial SMR uses for years.

[43] *Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 05-31, WT Docket No. 05-62 (rel. Feb. 16, 2005). Nextel does share the concerns raised by some petitioners regarding license trafficking and greenmailing in the 900 MHz band. The Commission recently addressed these issues, however, by affirming its freeze on new applications in this band. *Id.* ¶¶ 64-68.

[44] *Id.* ¶ 35.

[45] Coastal December 22 Petition at 12-17; Guskey Petition at 3-9; Preferred Petition at 33-46; Kay Petition at 5-10. Kay attaches to his petition for reconsideration a study that purports to provide a valuation analysis. Kay, however, provides no explanation as

well-reasoned *R&O* and *Supplemental Order*. The petitioners offer no basis for the Commission to reconsider these orders. Nextel is contributing billions of dollars of spectrum rights and funding commitments without which the 800 MHz reconfiguration decision, and the effective resolution of the public safety interference problem, would not be possible. The Commission had a compelling public interest justification for making Nextel whole by assigning it the 1.9 GHz spectrum. As the U.S. Government Accountability Office has determined, the assignment of this spectrum to Nextel falls within the Commission's statutory authority and within the deference accorded expert agency actions upon judicial review.[46]

The Commission should also reject the claim in one petition that the Commission should reconsider its reconfiguration decision, including the assignment of the 1.9 GHz spectrum to Nextel, in light of the proposed Sprint – Nextel merger.[47] In their merger application, Sprint and Nextel made clear that the merged company will accept Nextel's obligations under the reconfiguration decision. The assumption of these obligations is an unambiguous, express provision of the parties' merger agreement.[48] The Sprint Nextel merger consequently will in no way undermine or delay the implementation of 800 MHz band reconfiguration to eliminate public safety interference.

---

to why such an analysis could not have been filed prior to the issuance of the *R&O*. *See* 47 C.F.R. § 1.429(b).

[46] Letter from Anthony H. Gamboa, General Counsel, GAO, to Honorable Frank R. Lautenberg, U.S. Senate (Nov. 8, 2004).

[47] Duncan Petition at 5-9.

[48] *See* Application, WT Docket No. 05-63 at 62-63; Sprint Corporation, Form 8K, § 6.12 (Securities and Exchange Commission, Dec. 15, 2004) (Attachment A to the Application) ("From and after the Effective Time, the Surviving Company will assume and honor all obligations accepted by Nextel pursuant to the FCC's 800 MHz rebanding proceeding, Improving Public Safety in the 800 MHz Band, Report and Order, Fourth Memorandum Opinion and Order, and Order[.]").

IV. THE COMMISSION SHOULD DENY THE TMI-TERRESTAR PETITION

Two Mobile Satellite Service ("MSS") licensees request that the Commission either: (1) relieve an MSS party that enters the market after Nextel's 30-month Broadcast Auxiliary Service ("BAS") relocation period from having any reimbursement obligation to Nextel; or (2) clarify that the MSS reimbursement obligation ends 36 months after the effective date of the *R&O*.[49] The Commission should deny this request. Pursuant to the *R&O* (¶ 252), Nextel is required to relocate BAS licensees from the 1990-2025 MHz band within 30 months of the *R&O*'s effective date. Although Nextel will fund the upfront costs of BAS relocation, the *R&O* (¶ 261) gives Nextel the option of seeking reimbursement from MSS licensees for their *pro rata* share of these costs. To the extent Nextel elects this option, the MSS reimbursement obligation should extend until 36 months from the start date established by the public notice the Commission will issue regarding the computation of the 36-month benchmark, as provided in the Commission's orders in this proceeding.[50] This serves the public interest by synchronizing the MSS reimbursement obligation with the completion of 800 MHz reconfiguration and the true-up process established by the *R&O*. MSS licensees have no basis to object to this reimbursement obligation cut-off date, as they will clearly benefit from the relocation of BAS licensees from the 1.9 GHz spectrum. Moreover, TMI-TerreStar's proposed approach would give MSS licensees a perverse incentive to delay the initiation of service simply to avoid the reimbursement obligation.

---

[49] Joint Request for Clarification of TMI Communications and Company, LP ("TMI") and TerreStar Networks Inc. ("TerreStar") (Dec. 22, 2004).

[50] *Supplemental Order* ¶ 55; *R&O* ¶ 261.

V. THE COMMISSION SHOULD GRANT SOUTHERN LINC'S PETITION TO DELETE THE EXPANSION BAND IN THE ATLANTA AREA

To address the scarcity of available 800 MHz spectrum in the Atlanta, Georgia market, and to make 800 MHz band reconfiguration possible, SouthernLINC in its petition requests that the Commission eliminate the Expansion Band at 812.5-813.5/857.5-858.5 MHz within a 70-mile radius of the center of Atlanta, Georgia.[51] Nextel urges the Commission to grant this request.

As SouthernLINC describes, a substantial portion of the channels in the Expansion Band in the Atlanta market are currently licensed to public safety entities. If the Expansion Band is left intact, those public safety licensees will have the option to retune from that band segment into the interleaved spectrum at 809.0125-812.5/854.0125-857.5 MHz. Given the shortage of channels for non-cellular systems in the Atlanta market, Nextel agrees with SouthernLINC that the availability of this public safety retuning option would only exacerbate an already challenging band reconfiguration in Atlanta. To ensure that all incumbent licensees in Atlanta can be accommodated during the 800 MHz transition, the Commission should grant SouthernLINC's petition and delete the Expansion Band in that market. If the Commission determines that this is not feasible, it should at least consider reducing by half the size of the Expansion Band.[52]

---

[51] Petition for Reconsideration of SouthernLINC (Dec. 22, 2004).

[52] This alternative, *albeit* less effective solution, is described more fully in SouthernLINC's contemporaneously filed comments.

VI. CONCLUSION

The Commission should affirm its 800 MHz reconfiguration decision. It will promote a vital public interest and further the Commission's statutory mandate by improving public safety communications in the 800 MHz band.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

/s/ Robert S. Foosaner
Robert S. Foosaner
Senior Vice President and Chief Regulatory Officer

Lawrence R. Krevor
Vice President – Government Affairs

James B. Goldstein
Senior Attorney – Government Affairs

2001 Edmund Halley Drive
Reston, VA 20191
(703) 433-4141

Regina M. Keeney
Charles W. Logan
Stephen J. Berman
Lawler, Metzger & Milkman, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006
(202) 777-7700
Counsel for Nextel Communications, Inc.

April 21, 2005

Certificate of Service

I, Charles W. Logan, hereby certify that on this 21st date of April, 2005, copies of the foregoing Opposition and Comments of Nextel Communications, Inc. were delivered by first-class, postage-prepaid mail, unless otherwise indicated, to the following parties:

Harold Mordkofsky
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW
Washington, DC 20037
Counsel for Consolidated Edison Company of New York, Inc.

Wayne V. Black
Nicole B. Donath
Keller and Heckman LLP
1001 G Street, Suite 500 West
Washington, DC 20001
Counsel for The American Petroleum Institute.

Jill M. Lyon
Vice President & General Counsel
United Telecom Council
1901 Pennsylvania Ave., NW, Fifth Floor
Washington, DC 20006

Shirley S. Fujimoto
Jeffrey L. Sheldon
Keith A. McCrickard
McDermott Will & Emery LLP
600 Thirteenth Street, NW
Washington, DC 20005
Counsel for Entergy Corporation and Entergy Services, Inc.

Christine M. Gill
McDermott Will & Emery LLP
600 Thirteenth Street, NW
Washington, DC 20005
Counsel for Southern LINC

Michael D. Rosenthal
Director of Legal and External Affairs
Southern LINC
5555 Glenridge Connector, Suite 500
Atlanta, GA 30342

William J. Donohue
Associate General Counsel – Corporate & Commercial
Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 10101-8699

David B. Trego
Vice President, Telecommunications
American Electric Power Company, Inc.
1 Riverside Plaza
Columbus, OH 43215

Jason D. Griffith
Director, Telecommunications Engineering
American Electric Power Company, Inc.
1 Riverside Plaza
Columbus, OH 43215

William K. Keane
Duane Morris LLP
Suite 700
1667 K Street, NW
Washington, DC 20006-1608
Counsel for The National Association of Manufacturers and MRFAC, Inc

Thomas J. Keller
Association of American Railroads
50 F Street, NW
Washington, DC 20001

Louis P. Warchot
Senior Vice President-Law
and General Counsel
Association of American Railroads
50 F Street, NW
Washington, DC 20001

Dennis J. Starks
Senior Commerce Counsel
Association of American Railroads
50 F Street, NW
Washington, DC 20001

Charles D. Guskey
6237 Baymar Lane
Dallas, TX 75252

Michael K. Kurtis
Bennet & Bennet, PLLC
10 G Street, NE, 7th Floor
Washington, DC 20002
Counsel for Richard W. Duncan D/B/A Anderson Communications

Julian L. Shepard
Mark Blacknell
Williams Mullen, A Professional Corporation
1666 K Street, NW, Suite 1200
Washington, DC 20006-1200
Counsel for Coastal SMR Network, L.L.C./A.R.C., Inc. and Scott C. MacIntyre, Etc.

Robert J. Keller
Law Office of Robert J. Keller, P.C.
P.O. Box 33428 – Farragut Station
Washington, DC 20033-3428
Counsel for James A. Kay, Jr.

Elizabeth R. Sachs
Lucas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102
Counsel for AIRPEAK Communications, LLC

Charles M. Austin, President
Preferred Communication Systems, Inc.
400 E. Royal Lane, Suite N24
Irving, TX 75039

Robert M. Gurss
Director, Legal & Government Affairs
Association of Public-Safety
Communications Officials-International
1725 DeSales Street, NW, Suite 808
Washington, DC 20036

Peter Meade, Chairman
Assistant Fire Marshal
Fire & Rescue Services
Nassau Country Fire Commission
140 15th Street
Mineola, NY 11501

Kent S. Foster, President
Silver Palm Communications, Inc.
5454 Wisconsin Avenue, Suite 720
Chevy Chase, MD 20815

Gregory C. Staple
R. Edward Price
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1008
Counsel for TMI Communications and Company, Limited Partnership and Terrestar Networks, Inc.

/s/ Charles W. Logan
Charles W. Logan